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**UNITED STATES DISTRICT COURT  
 NORTHERN DISTRICT OF CALIFORNIA  
 OAKLAND DIVISION**

DRAKES BAY OYSTER COMPANY, *et al.* )  
 )  
 Plaintiffs, )  
 )  
 v. )  
 )  
 KENNETH L. SALAZAR, in his official )  
 capacity as Secretary, U.S. Department of )  
 the Interior, *et al.*, )  
 )  
 Defendants. )

Case No. 4:12-cv-06134-YGR

**DECLARATION OF BARBARA  
 GOODYEAR IN SUPPORT OF  
 FEDERAL DEFENDANTS'  
 OPPOSITION TO PLAINTIFFS'  
 MOTION FOR PRELIMINARY  
 INJUNCTION**

Date: January 25, 2013  
 Time: 2:00 p.m.  
 Court: Courtroom 5

1 I, Barbara Goodyear, declare as follows:

2 1. I am the Field Solicitor for the U.S. Department of the Interior Solicitor's Office in  
3 San Francisco, California. I have held this position since 2004. Prior to becoming Field Solicitor, I  
4 was Assistant Field Solicitor, a position that I held from 1992 until my promotion to Field Solicitor.  
5 Attorneys in the Solicitor's Office provide legal advice to agencies within the U.S. Department of the  
6 Interior, one of which is the National Park Service. In my capacity as Field Solicitor, I advise the  
7 National Park Service on a wide variety of environmental compliance matters including NEPA and  
8 the Wilderness Act. I am familiar with the National Park Service's management of Point Reyes  
9 National Seashore including the operations of the Drakes Bay Oyster Company. This Declaration is  
10 submitted on behalf of Federal Defendants in support of Federal Defendants' Opposition to Plaintiffs'  
11 Motion for Preliminary Injunction filed concurrently herewith. The documents attached as exhibits to  
12 my declaration are from the official files of the Department of the Interior, including the National  
13 Park Service and Office of the Solicitor. I have personal knowledge of the matters stated herein and,  
14 if called as a witness, could and would completely testify thereto.

15 2. Attached hereto as **Exhibit 1** is a true and correct copy of the November 29, 2012  
16 Secretary of the Interior ("Secretary") Memorandum directing the National Park Service ("NPS") to  
17 allow Drakes Bay Oyster Company's ("DBOC") Reservation of Use and Occupancy and Special Use  
18 Permit to expire by their own terms.

19 3. Attached hereto as **Exhibit 2** is a true and correct copy of the November 29, 2012  
20 letter from the NPS Regional Director of the Pacific West Region to DBOC explaining the terms of  
21 the limited authorization DBOC has to remove personal property and close out its operations.

22 4. Attached hereto as **Exhibit 3** is a true and correct copy of the November 20, 2012  
23 Final Environmental Impact Statement for the Drakes Bay Oyster Company Special Use Permit  
24 ("FEIS")

25 5. Attached hereto as **Exhibit 4** is a true and correct copy of the 1965 Conveyance Act  
26 (Assembly Bill No. 1024) granting certain tide and submerged lands from the State of California to  
27 the United States in furtherance of Point Reyes National Seashore.  
28

1           6.       Attached hereto as **Exhibit 5** is a true and correct copy of the July 26, 2007 letter from  
2 the California State Lands Commission to Alliance for Local Sustainable Agriculture concluding that  
3 the State of California had conveyed out all of the State's real property interest except the mineral  
4 estate and that the "right to fish" does not include aquaculture.

5           7.       Attached hereto as **Exhibit 6** is a true and correct copy of the March 25, 2008 letter  
6 from the California Department of Fish and Game ("CDFG") to the Honorable Jared Huffman  
7 regarding Drakes Bay Oyster Company.

8           8.       Attached hereto as **Exhibit 7** is a true and correct copy of the May 15, 2007 letter  
9 from the CDFG to Point Reyes National Seashore concluding that the Drakes Bay Oyster Company  
10 mariculture operation is properly within the management authority of Point Reyes National Seashore.

11           9.       Attached hereto as **Exhibit 8** is a true and correct copy of the 1972 Grant Deed (File  
12 No. 33-5-2295-227, Tract No. 02-106), Offer to Sell Real Property (Contract No. CX800032073),  
13 including Reservation of Use and Occupancy (Exhibit "C") between the Johnson Oyster Company  
14 ("Johnson") and the United States.

15           10.      Attached hereto as **Exhibit 9** is a true and correct copy of the Act of Sept. 13, 1962,  
16 Pub. L. No. 87-657, 76 Stat. 538 establishing the Point Reyes National Seashore.

17           11.      Attached hereto as **Exhibit 10** is a true and correct copy of the Act of Oct. 18, 1976,  
18 Pub. L. No. 94-544, 90 Stat. 2515 designating certain lands in the Point Reyes National Seashore as  
19 wilderness and potential wilderness.

20           12.      Attached hereto as **Exhibit 11** is a true and correct copy of the Act of Oct. 20, 1976,  
21 Pub. L. No. 94-567, 90 Stat. 2692 revising the boundaries of the wilderness designation in Point  
22 Reyes National Seashore.

23           13.      Attached hereto as **Exhibit 12** is a true and correct copy of the September 1976 map  
24 titled Wilderness Plan Point Reyes National Seashore, numbered 612-90,000-B.

25           14.      Attached hereto as **Exhibit 13** is a true and correct copy of H.R. Rep. No. 94-1680  
26 (Sept. 24, 1976) accompanying Pub. L. No. 94-544.

27           15.      Attached hereto as **Exhibit 14** is a true and correct copy of the February 26, 2004 San  
28 Francisco Field Solicitor's Memorandum Opinion concluding that the NPS was mandated by law to

1 convert the potential wilderness in Drakes Estero to full wilderness as soon as the non-conforming  
2 use can be eliminated.

3 16. Attached hereto as **Exhibit 15** is a true and correct copy of S.Rep. No. 94-1357 (Sept.  
4 29, 1976) accompanying Pub. L. No. 94-567.

5 17. Attached hereto as **Exhibit 16** is a true and correct copy of the Act of Nov. 10 1978,  
6 Pub. L. No. 95-625, 92 Stat. 3467, 3487 which authorized the Secretary to lease federal land within  
7 the Point Reyes National Seashore that was agricultural prior to its acquisition by the United States.

8 18. Attached hereto as **Exhibit 17** is a true and correct copy of the June 1, 1979 Allotment  
9 of State Water Bottoms for Mariculture Lease M-438-01.

10 19. Attached hereto as **Exhibit 18** is a true and correct copy of the June 1, 1979 Indenture  
11 of Lease M-438-02.

12 20. Attached hereto as **Exhibit 19** is a true and correct copy of the June 25, 2004 Lease  
13 M-438-01 Renewal.

14 21. Attached hereto as **Exhibit 20** is a true and correct copy of the June 25, 2004 Lease  
15 M-438-02 Renewal.

16 22. Attached hereto as **Exhibit 21** is a true and correct copy of the March 18, 2005  
17 Amendment No. 2 to Indenture of Lease M-438-01.

18 23. Attached hereto as **Exhibit 22** is a true and correct copy of the March 18, 2005  
19 Amendment No. 3 to Indenture of Lease M-438-02.

20 24. Attached hereto as **Exhibit 23** is a true and correct copy of the December 17, 2004  
21 Asset Purchase Agreement between Johnson Oyster Company and Kevin Lunny.

22 25. Attached hereto as **Exhibit 24** is a true and correct copy of the January 25, 2005 letter  
23 from the National Park Service to Kevin Lunny regarding DBOC's removal and restoration plan that  
24 was enclosed with the Feb. 26, 2004 Field Solicitor's Opinion.

25 26. Attached hereto as **Exhibit 25** is a true and correct copy of the March 28, 2005 letter  
26 from the NPS to Kevin Lunny stating that no new permits will be issued after the 2012 expiration  
27 date.

1           27.     Attached hereto as **Exhibit 26** is a true and correct copy of the April 2008 Special Use  
2 Permit # MISC-8530-6000-8002 issued to Drakes Bay Oyster Company from the National Park  
3 Service.

4           28.     Attached hereto as **Exhibit 27** is a true and correct copy of Act of Oct. 30, 2009, Pub.  
5 L. No. 111-88, § 124, 123 Stat. 2932.

6           29.     Attached hereto as **Exhibit 28** is a true and correct copy of select excerpts from the  
7 September 23, 2011 Draft Environmental Impact Statement Drakes Bay Oyster Company Special  
8 Use Permit ("DEIS").

9           30.     Attached hereto as **Exhibit 29** is a true and correct copy of the December 4, 2012  
10 Federal Register Notice (77 Fed. Reg. 71826).

11           31.     Attached hereto as **Exhibit 30** is a true and correct copy of the 2008 Report from the  
12 U.S. Department of Interior, Office of Inspector General.

13           32.     Attached hereto as **Exhibit 31** is a true and correct copy of the National Academy of  
14 Sciences report: Shellfish Mariculture in Drakes Estero, Point Reyes National Seashore, California  
15 (2009).

16           33.     Attached hereto as **Exhibit 32** is a true and correct copy of the 2011 Report from the  
17 Department of the Interior, Office of the Solicitor.

18           34.     Attached hereto as **Exhibit 33** is a true and correct copy of the National Academy of  
19 Sciences report: Scientific Review of the Draft Environmental Impact Statement-Drakes Bay Oyster  
20 Company Special Use Permit.

21           35.     Attached hereto as **Exhibit 34** is a true and correct copy of the October 24, 2012  
22 Notice of Intent to Commence Cease and Desist and Restoration Order Proceedings from the  
23 California Coastal Commission ("CCC") to DBOC.

24           36.     Attached hereto as **Exhibit 35** is a true and correct copy of excerpts of the 2006 NPS  
25 Management Policies.

26           37.     Attached hereto as **Exhibit 36** is a true and correct copy of 2007 Consent Cease and  
27 Desist Order (Order Number: CCC-07-CD-11) from the CCC regarding DBOC's unpermitted  
28

1 development consisting of offshore aquaculture operations, onshore processing and retail facilities,  
2 and related residential use.

3 38. Attached hereto as **Exhibit 37** is a true and correct copy of the November 16, 2010  
4 letter from the U.S. Army Corps of Engineers to Point Reyes National Seashore.

5 39. Attached hereto as **Exhibit 38** is a true and correct copy of the August 15, 1961  
6 Proposed Point Reyes National Seashore Boundary Map NS-PR-7002 depicting the pastoral zone.

7 40. Attached hereto as **Exhibit 39** is a true and correct copy of the Act. of Apr. 3, 1970,  
8 Pub. L. No. 91-223, 84 Stat. 90, which repealed § 4 of the Act of Sept. 13, 1962, Pub. L. No 87-657,  
9 enabling the NPS to prevent further subdivision of the Point Reyes peninsula.

10 41. Attached hereto as **Exhibit 40** is a true and correct copy of the March 17, 1970 Senate  
11 Congressional Record discussing Point Reyes National Seashore.

12 42. Attached hereto as **Exhibit 41** is a true and correct copy of excerpts of Wilderness  
13 Additions, National Park System, Hearings before the Subcommittee on Parks and Recreation, 94<sup>th</sup>  
14 Congress, February 5, 19 and March 2, 1976, and Senate bill, S. 2472 that was never enacted.

15 43. Attached hereto as **Exhibit 42** is a true and correct copy of the February 2, 2004 letter  
16 from CDFG to Johnson regarding the proposed rent increase upon lease renewal, lease term, and  
17 lease clean-up at termination or default.

18 44. Attached hereto as **Exhibit 43** is a true and correct copy of the March 15, 2004 letter  
19 from the NPS to CDFG that was enclosed with the February 26, 2004, and February 27, 2004 Field  
20 Solicitor's Opinion.

21 45. Attached hereto as **Exhibit 44** is a true and correct copy of the June 14, 2004  
22 memorandum from the Director, CDFG to the Executive Director, California Fish and Game  
23 Commission ("CFG") regarding Johnson's lease renewal of state water bottom lease agreements.

24 46. Attached hereto as **Exhibit 45** is a true and correct copy of the June 18, 2004 letter  
25 from the NPS to CDFG regarding lease renewal.

26 47. Attached hereto as **Exhibit 46** is a true and correct copy of the July 11, 2012 letter  
27 from the CFGC to the NPS regarding DBOC's state water bottom leases.



1           48. Attached hereto as **Exhibit 47** is a true and correct copy of the spreadsheet and map  
2 DBOC provided to the NPS on November 15, 2010, documenting the location, length, number of  
3 bents, and condition of each rack within Drakes Estero.

4           49. Attached hereto as **Exhibit 48** is a true and correct copy of the June 5, 2012 letter  
5 from DBOC to the NPS, providing additional information about DBOC's operations for use in the  
6 NEPA process.

7           Pursuant to 28 U.S.C. § 1746, I hereby declare under penalty of perjury that the foregoing is  
8 true and correct.

9           Executed this 9th day of January, 2013, in San Francisco, California.

10  
11 By:

  
Barbara Goodyear